SENATE LOCAL GOVERNMENT
EXHIBIT NO. 2
DATE 3.11.2009
BILL NO. HB 486

Montana Association of REALTORS® Political Affairs

One South Montana Avenue, Suite M1 · Helena, MT 59601
Phone: 406-443-4032 · Fax: 406-443-4220 · Toll Free: 800-477-1864
Email: mtmar@montanarealtors.org · Web: www.montanarealtors.org

Testimony of Montana Association of REALTORS® (MAR)
Glenn Oppel, Government Affairs Director
Senate Local Government Committee, Mar. 11, 2009, 3:00 p.m., Rm 405

House Bill 486 – Generally revise land use and planning laws
Sponsor: Rep. Gary MacLaren

MAR Position: Support

HB 486 is based on a consensus bill from the 2007 Session (Senate Bill 110) supported by the REALTORS®, the Builders, MACo, League of Cities and Towns, Smart Growth, and Planners intended to clean up and modernize parts of annexation, zoning, and subdivision law. The bill appears generally to do just that and is for the most part a very positive and supportable bill.

Section 1 is a change to the condominium declaration filings. It adds a new subpart 8 to section 70-23-301. In essence, this requires a certification from the local government that the condominiums are exempt from review before they can be filed. Clarifying what grounds the local government entity has to state that condominiums are not exempt from review is helpful. This is a section that essentially codifies most local government's current practice, which is to refuse to record condominiums declarations that they do not feel are in compliance with 76-3-203 or the exemptions in other parts of the subdivision and planning act.

Section 2 clarifies the issue of free holders versus real property owners. "Free holders" is a term that has crept into the Planning and Zoning Commission sections and does not generally exist otherwise. It added enough confusion to protest considerations that a court action was almost guaranteed. "Real property owners" is a defined and generally understood term which does simplify matters.

Section 3 addresses the issue that many counties do not have a legitimate "surveyor," adding the option of putting the county clerk and recorder on the Planning and Zoning Commission is a positive. This would allow for an elected official with more land use experience to be present. Currently most counties have combined the office of surveyor with another office that has very little to do with those duties, such as treasurer, county attorney, or even sheriff.

Section 4 amendments to 76-2-107 allow for the simplification of the removal of a voluntary zoning district with no regulations. Circumstances do occur when a voluntary zoning district is formed and then through various problems, no regulations are enacted. This is essentially an intra-governmental issue and is of no particular interest to the REALTORS®.

Section 5 modifies the language of what zoning does. The language in subsections (2) and (4) are inartful and in need of revision to clearly state what zoning can do. The new language in subsection (1)(a) rewords the language in stricken subsections (2) and (4) in a manner that does not decrease or increase a county's current zoning authority. MAR does not believe that the new language in (1)(a) provides *new authority* for counties to zone for density alone. Current law already allows such zoning practices. Moreover, MAR supports reducing to a reasonable limit the length of time one has to file an action challenging the creation of a zoning district. MAR would support an amendment to increase the 60-day amendment to 120 days. MAR believes that the right of property owners to challenge a zoning district must be balanced with regulatory predictability and certainty. Subdivision proposals pending

when a challenge is made could very well be delayed or stopped. If a developer or property owner desires to challenge a zoning district, they should do so as quickly as possible so that the question is resolved and does not adversely impact or cloud the developer's title, or even prevent development.

Section 6 modernizes language – this time the language of 76-2-203. The prior language derives from the original enactment of the statute, which flows from anti-tenement statutes in New York City in the late 20s or early 30s. The terms, not surprisingly then, do not have a very good fit to Montana. Zoning regulations must be designed to eliminate or facilitate something.

Section 7 is designed to clarify the "free holders" versus "real property owners" issue, so the comments in Section 2 apply here.

Section 8 modifies section 76-2-304 to modernize the language regarding what zoning regulations must be designed to do, so the comments for Section 6 apply here.

Section 9, the addition of aggregations of land being exempted from subdivision review, is beneficial to MAR members.

Section 10 modifies section 76-3-504 to require county or city subdivision regulations to set a time limit within which a written decision on a subdivision is provided to the applicant. This is certainly a positive step, and MAR considers the 30 working day time limit reasonable. In the interests of regulatory predictability and certainty, it is critical to have a prescribed time limit.

Section 11 modifies section 76-3-506 and Section 16 which modifies 76-3-609 very much work together. It makes clear that a hearing for a variance on first minor subdivisions does not need to occur. The changes to 76-3-609 prohibit public hearings and their additional time, expense, and hassle for first minor subdivisions.

Section 12 modifying 76-3-507 clarifies confusion regarding what types of bonds or securities are acceptable. Local governments generally accept Letters of Credit for this provision.

Section 13 modifies section 76-3-608 in two ways. The first is fairly innocuous, in that it adds a requirement that easements for utilities be shown going to the subdivision not just within the subdivision. In essence this requires a developer to show that electrical power can reach the subdivision. The second modification is that subsection 6 is removed. In the 2007 Legislature 76-3-616 was adopted, which effectively does the exact same thing, though better.

Section 14, the notes above for Section 13 would apply here as well.

Section 15 dovetails into those modifications that were made in Section 12 regarding bondable improvements and the comments for that section would apply here.

Section 16 is very similar to section ~~12~~ 10 and it is beneficial require a written statement within a 30 working day time limit as to why the subdivision was denied. In the interests of regulatory predictability and certainty, it is critical to have a prescribed time limit.

Section 17 modifies section 76-3-625 to clarify that an appeal must be taken within 30 days from the date of the written decision. This is a beneficial clarification to everyone.

Section 18 repeals section 76-3-210. With the elimination of 76-3-608(6), 76-3-210 this is now a superfluous section.